

AO 89B (Rev. 06-09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

For the

District of New Mexico

JTH Tax, Inc. d/b/a Liberty Tax Service

Plaintiff

v.

Troy Clark and Southwest Tax Stores, LLC

Defendant

Civil Action No. 2:11cv59

(If the action is pending in another district, state where:

Eastern District of Virginia)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Freedom Tax Services, LLC 3118 San Mateo Boulevard NE, Albuquerque, New Mexico 87110
c/o Kim Gutierrez, Sole Member

☒ **Production:** YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

See attached Exhibit A.

Place: 1716 Corporate Landing Parkway
Virginia Beach, VA 23454

Date and Time:

05/08/2011 9:00 am

☐ **Inspection of Premises:** YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place: See attached Exhibit B.

Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 4/13/11

CLERK OF COURT

Signature of Clerk or Deputy Clerk

OR 
Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party)

JTH Tax, Inc. d/b/a Liberty Tax Service

, who issues or requests this subpoena, are:

Sada Sheldon
sada.sheldon@libtax.com
(757) 493-8855

1716 Corporate Landing Parkway
Virginia Beach, VA 23454

EXHIBIT

tabbies

3

AO 88B (Rev. 06/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (Page 2)

Civil Action No. 2:11cv59

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for ~~name of individual and title, if any~~ KIM GUTIERREZ, SOLE MEMBER
was received by me on ~~date~~ 4/14/2011

☒ I served the subpoena by delivering a copy to the named person as follows:

DELIVERED PERSONALLY TO KIM GUTIERREZ AT THE
ADDRESS ON THE SUBPOENA on (date) 4/14/2011 at

☐ I returned the subpoena unexecuted because:

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of

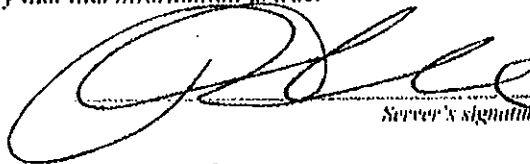
\$

My fees are \$ for travel and \$ for services, for a total of \$ 0.00

I declare under penalty of perjury that this information is true.

Date:

4/15/11



Server's signature

RICHARD E. MILLER, LICENSED INVESTIGATOR
Printed name and title

PO BOX 40579, ALBUQUERQUE, NM 87196
Server's address

Additional information regarding attempted service, etc:

Exhibit A

To: Freedom Tax Services, LLC
c/o Kim Gutierrez, Sole Member
3118 San Mateo Boulevard NE
Albuquerque, New Mexico 87110

Please provide copies of the following documents for Freedom Tax Services, LLC ("Freedom Tax"), located at the above address as well as at:

- 2130 San Mateo NE, Suite G, Albuquerque, New Mexico 87110;
 - 3118 San Mateo Blvd. NE, Albuquerque, New Mexico 87110;
 - 475 Coors Blvd. NW, Suite D, Albuquerque, New Mexico 87121;
 - 1449 A Eubank Blvd., Albuquerque, New Mexico 87112; and
 - 1009 Golf Course Road SE, Suite 104, Rio Rancho, New Mexico 87124;
1. List by customer name and primary SSN the dollars received by Freedom Tax from each customer for tax preparation services from January 1, 2010 through and including April 15, 2010.
 2. Any such personnel or payroll documents as show the name and last known address of all employees for Freedom Tax in 2010 and 2011.
 3. All customer lists, any document attached or electronic file that contains customer names, addresses or any customer information that was saved, copied, downloaded, maintained, transferred, or generated from any Liberty Tax Service office including those owned by Troy Clark or Southwest Tax, LLC.
 4. All "Release of Information" (see Exhibit 1) forms signed by Freedom Tax customers authorizing Southwest Tax Stores d/b/a Liberty Tax Service, LLC to release a copy of their Federal and State Income Tax Returns.
 5. All correspondence (including e-mail communication) with the landlords for all Freedom Tax office locations from September 1, 2010 through April 15, 2010.
 - a. 2130 San Mateo Boulevard NE, Suite G, Albuquerque, New Mexico
 - b. 1449A Eubank Boulevard NE, Albuquerque, New Mexico
 - c. 3118 San Mateo Boulevard NE, Albuquerque, New Mexico
 - d. 1009 Golf Course Road, Suite 104, Rio Rancho, New Mexico
 - e. 475 Coors Boulevard NW, Suite D, Albuquerque, New Mexico
 6. As to the time period November 1, 2010 to April 15, 2011, all leases, sub-leases, and assignment of leases for the offices used by Freedom Tax Stores, including the following locations:
 - a. 2130 San Mateo Boulevard NE, Suite G, Albuquerque, New Mexico

- b. 1449A Eubank Boulevard NE, Albuquerque, New Mexico
 - c. 3118 San Mateo Boulevard NE, Albuquerque, New Mexico
 - d. 1009 Golf Course Road, Suite 104, Rio Rancho, New Mexico
 - e. 475 Coors Boulevard NW, Suite D, Albuquerque, New Mexico
7. As to the time period November 1, 2010 to April 15, 2011, all cancelled checks for rent payments paid to you from a third party and/or paid by you for the offices used by Freedom Tax Stores, including the following locations:
- a. 2130 San Mateo Boulevard NE, Suite G, Albuquerque, New Mexico
 - b. 1449A Eubank Boulevard NE, Albuquerque, New Mexico
 - c. 3118 San Mateo Boulevard NE, Albuquerque, New Mexico
 - d. 1009 Golf Course Road, Suite 104, Rio Rancho, New Mexico
 - e. 475 Coors Boulevard NW, Suite D, Albuquerque, New Mexico
8. As to the time period November 1, 2010 through April 15, 2011, all telephone bills that were for telephone service for the offices currently occupied by Freedom Tax Stores, including the following locations:
- a. 2130 San Mateo Boulevard NE, Suite G, Albuquerque, New Mexico
 - b. 1449A Eubank Boulevard NE, Albuquerque, New Mexico
 - c. 3118 San Mateo Boulevard NE, Albuquerque, New Mexico
 - d. 1009 Golf Course Road, Suite 104, Rio Rancho, New Mexico
 - e. 475 Coors Boulevard NW, Suite D, Albuquerque, New Mexico
9. As to the time period November 1, 2010 to April 15, 2011, all electric, water, and natural gas bills for the offices currently occupied by Freedom Tax Stores, including the following locations:
- a. 2130 San Mateo Boulevard NE, Suite G, Albuquerque, New Mexico
 - b. 1449A Eubank Boulevard NE, Albuquerque, New Mexico
 - c. 3118 San Mateo Boulevard NE, Albuquerque, New Mexico
 - d. 1009 Golf Course Road, Suite 104, Rio Rancho, New Mexico
 - e. 475 Coors Boulevard NW, Suite D, Albuquerque, New Mexico
10. As to the time period November 1, 2010 through April 15, 2011, any employment contract(s) between Freedom Tax Stores and its employees.
11. As to the time period January 1, 2010 through April 15, 2011, copies of all employee schedules showing the name of each employee, their assigned task, and the date and time scheduled to work.
12. As to the time period January 1, 2010 through April 15, 2011, any documents, contracts, purchase and sale agreements, commission agreements, employment contract or other document(s) evidencing any financial interest, equity interest, past

relationship or ongoing relationship between Freedom Tax Stores and Troy Clark, Ron Clark, or Kim Gutierrez.

13. Articles of incorporation or articles of organization for Freedom Tax Stores.
14. As to the time period January 1, 2010 through April 15, 2011, all business licenses for Freedom Tax Stores.
15. As to the time period November 1, 2010 through April 15, 2011, all documents which show the purchase or license of tax preparation software by Freedom Tax Stores.
16. As to the time period November 1, 2010 to April 15, 2011, all contracts, applications, invoices and receipts which evidence the formation of a business relationship between any bank product provider (e.g., refund anticipation loan, RAC, ERC, etc.), and Freedom Tax Stores.
17. As to the time period November 1, 2010 to April 15, 2011, all contracts, applications, invoices and receipts which evidence the formation of a business relationship between any electronic filing provider (e.g., Drake, Nelco or UTS) and Freedom Tax Stores.
18. As to the time period September 1, 2010 to the present, all EFIN applications filed by or on behalf of Freedom Tax Stores.
19. As to the time period September 1, 2010 to April 15, 2011, all written communication from the IRS as to all EFIN applications filed by or on behalf Freedom Tax Stores.
20. As to the time period November 1, 2010 to April 15, 2011, copies, in the original media format, of all advertisements, including flyers, brochures, mailings, emails, television commercials, radio commercials or any other media, soliciting tax preparation services by Freedom Tax Stores.
21. Copies of all invoices, purchase orders, mock ups and approvals of advertisements produced in response to no. 17 above.
22. Emails to or from outside vendors with respect to the design, approval, or placement of advertisements produced in response to no. 17 above.
23. As to the time period November 1, 2010 to April 15, 2011, all receipts, journals, ledgers, and computer entries that show the revenues of Freedom Tax Stores.
24. As to the time period November 1, 2010 to April 15, 2011, the checkbook, journal, ledger or computer entries which show the expenses of Freedom Tax Stores.
25. As to the time period November 1, 2010 to April 15, 2011, all bank statements, deposit slips, and other receipts or banking records of Freedom Tax Stores.

26. A check register, computer log or other documents that shows all payments made by Freedom Tax from November 1, 2010 through April 15, 2011.
27. The Freedom Tax Stores operations manual, employee manual, employee handbook and all other Freedom Tax Stores operational guidelines in effect in 2010 or 2011.
28. All documents that show the source of funding, loans, and start-up capital for Freedom Tax.
29. As to the time period November 1, 2010 to April 15, 2011, all e-mails sent by you to Troy Clark, or received by you from Troy Clark.
30. All contracts and agreements between you and Troy Clark, Ron Clark or Kim Gutierrez entered into between April 1, 2010 – April 15, 2011.

Reimbursement of your reasonable costs and expenses in complying with this subpoena are assured. You may simply enclose an invoice for your copying and postage costs with the documents when you send them. If you have any questions about this subpoena, please contact Sada Sheldon at (800) 790-3863 ext. 8033.

Thank you very much.

Sada Sheldon, Esq.
Corporate Counsel
Liberty Tax Service
1716 Corporate Landing Parkway
Virginia Beach, Virginia 23454
sada.sheldon@libtax.com

Release of Information

I _____ hereby authorize Southwest Tax Stores
d/b/a Liberty Tax Service, LLC to release a copy of my Federal and State
Income Tax returns for the following Year(s):

_____ to Freedom Tax Service.

Name on Tax Return: _____

Last four digits of SSN: _____

Location of Office Return Prepared at: _____

(Signed)

(Dated)



Exhibit B

To: Freedom Tax Services, LLC
c/o Kim Gutierrez, Sole Member
3118 San Mateo Boulevard NE
Albuquerque, New Mexico 87110

Please permit entry and inspection of all Freedom Tax Services, LLC offices by Liberty Tax Service technical support personnel for the purposes of allowing an inspection and copying of all computer data and electronic media and paper files/records presently at the locations listed below.

Any attempt to remove, change, alter, or delete any such items or information on any such items from the moment of receipt of this subpoena until this subpoena is complied with will be treated as obstruction of justice and legal remedies sought against anyone taking such action.

- a. Please permit entry by two Liberty Tax Service technical support persons onto the premises of Freedom Tax at:
 - i. 3118 San Mateo Blvd. NE, Albuquerque, New Mexico 87110;
 - ii. 1449 A Eubank Blvd., Albuquerque, New Mexico 87112;
 - iii. 475 Coors Blvd. NW, Suite D, Albuquerque, New Mexico 87121;
 - iv. 2130 San Mateo NE, Suite G, Albuquerque, New Mexico 87110; and
 - v. 1009 Golf Course Road SE, Suite 104, Rio Rancho, New Mexico 87124

Beginning on June 13, 2011 at 9:00 a.m. with the office located at 3118 San Mateo Blvd. NE, Albuquerque, New Mexico 87110, the inspection will continue from time to time and day to day until completed.

- b. Please permit Liberty Tax's technical support persons to:
 - (1) inspect and copy all computer data and other electronic media and paper files at this location to determine any retention of Liberty Tax customer tax returns, files, records, lists and other sources of information containing the names of customers who patronized Troy Clark's former Liberty Tax franchises; and,
 - (2) to determine the number of Liberty customer returns filed as well as any fees generated by such tax returns and to determine with which company Freedom Tax e-files its tax returns.

If you have any questions about this subpoena, please contact Attorney Sada Sheldon at (757) 493-8855 . Thank you very much.